

1 (The document referred to,
2 having been previously marked
3 for identification as Adams
4 Exhibit No. 43 was received in
5 evidence.)

6 JUDGE SIPPEL: Thank you for bringing that to my
7 attention.

8 I also want to advise, before, while counsel is
9 right here, that I presently intend to call a pre-hearing
10 conference for next Wednesday at 10:00 a.m. to discuss
11 scheduling in phase two. What's the date on next Wednesday?
12 That would be the 19th. That would be subject, of course,
13 to Mr. Shook's availability. His health and availability,
14 but that's the way I want to set it up. I'll put something
15 in my order that outlines what it is I want to cover.

16 Of course you all can be thinking about it, too.

17 All right, we're back to exhibits now. We're back
18 to Reading's Exhibits 17 and 17-A for identification, right?

19 MR. SIFERS: Yes. We also need to discuss 18. We
20 have the two attachments, the attachment to that as well.

21 JUDGE SIPPEL: Was it Attachment A or Exhibit A?

22 MR. SIFERS: Exhibit A, yes.

23 JUDGE SIPPEL: Let's start with 17. We'll take
24 these in sequence.

25 Does the Reporter have what you marked yesterday

1 as Exhibit 17?

2 MR. SIFERS: Yes, she does.

3 JUDGE SIPPEL: Why don't you take that back from
4 the Reporter.

5 MR. SIFERS: Okay.

6 JUDGE SIPPEL: So we're substituting a new Reading
7 Exhibit 17 for identification. Copies have been given to
8 me, to the Reporter, and to Mr. Cole.

9 Would you identify what it is now, and the nature
10 of the document vis a vis the changes, sir?

11 MR. SIFERS: Okay. Let me go through from the top
12 the changes from the previous document.

13 The first significant change, it has been broken
14 down into two categories and appears on two pages, two 8-1/2
15 by 11 pages rather than one 8-1/2 by 14.

16 The first thing that I did to distinguish between
17 the two sections is the first section is headed with the
18 title, "Shareholders of Record Previously Approved by the
19 Commission" and then with a footnote. Footnote 1. If you
20 look at the bottom of the first page, Footnote 1 explains
21 the stock is held by persons whose qualifications to be
22 Commission licensees have been approved or passed upon in
23 connection with the Commission's approval of a long form
24 application wherein that person was disclosed. See
25 Metromedia, Inc., 98 FCC 2nd 300 and 305, paragraph 8, 1984.

1 The case citation is there because on the
2 instructions to Form 316 it contains a citation in the
3 instructions to Metromedia, Inc. which further explains the
4 notion of having been previously approved, or as the
5 language that's used in that opinion as well, passed upon by
6 the Commission. That was put in there as an effort to
7 comply with what you requested yesterday in terms of trying
8 to explain what I meant by saying approved by the
9 Commission.

10 JUDGE SIPPEL: That's exactly the type of
11 explanation I was seeking. I hope that will be sufficient.
12 Let's go from there then.

13 MR. SIFERS: The second difference is if you go to
14 page two, I've titled this part of the document with the
15 title "Shareholders of Record Not Previously Approved by the
16 Commission" and made two other changes on the document.
17 Three other changes, excuse me.

18 As you will recall, an issue was raised yesterday
19 by Mr. Cole, a technical issue, regarding the certificate
20 number that we had inserted for the shares issued on October
21 15, '91. As I explained yesterday, the information in the
22 column that's titled "shares issued 10/15/91" came from the
23 source document that was used for the fifth column, "shares
24 issued 12/31/91" which was Adams Exhibit 24, wherein we had
25 the share register for those shares that were issued. They

1 identified that particular certificate number, the shares
2 issued, and then also included information regarding which
3 shares were being replaced and how many shares were
4 replacing that.

5 As Mr. Cole correctly noted, the share certificate
6 number for the share that was replaced was not correctly
7 noted there. I had mentioned two reasons for inserting
8 number 25 --

9 JUDGE SIPPEL: This is for Carol Anne Kasko?

10 MR. SIFERS: Yes. I had explained two reasons for
11 inserting share number 25. The first being it appeared from
12 a logical inference to be drawn that if you follow the share
13 certificate numbers that appeared in order, that should be
14 share number 25. I also explained that I had contacted at
15 some point when this first arose, that I had contacted
16 someone at the station and they had given me some assurance
17 that it was share certificate number 25. Yesterday
18 afternoon and evening I was on the phone with three
19 individuals and unfortunately am not able to confirm what
20 the original share certificate was, so what we've chosen to
21 do is put an asterisk in there and just explain that the
22 stock register for Carol Anne Kasko was not completed
23 correctly and therefore the original share certificate is
24 unknown.

25 JUDGE SIPPEL: What about with respect to the name

1 of Hugh Morris or Hugh Norris?

2 MR. SIFERS: I think we had it as, well for
3 whatever reason, I looked at this this morning to confirm
4 that I made the change, and I swore as I read the computer
5 that it showed that I had made the change and changed Morris
6 to Norris, but it does not appear that way on this form.

7 JUDGE SIPPEL: We can change that manually.

8 MR. SIFERS: I don't know what happened there.

9 JUDGE SIPPEL: Be sure you change the Reporter's
10 copy also.

11 MR. SIFERS: I'll change the Reporter's copy.

12 JUDGE SIPPEL: But it is Mr. Hugh Norris, N like
13 in Nebraska.

14 MR. SIFERS: Yes.

15 JUDGE SIPPEL: Okay.

16 MR. SIFERS: I apologize for that.

17 The last change I made on there if you'll notice
18 the bottom entry is Partel Incorporated. I have indented
19 that just to be consistent with the rest of the form because
20 Partel is a wholly owned company, Mike Parker is the sole
21 shareholder of Partel, Inc., so I've indented that to show
22 on this form that Partel should be --

23 JUDGE SIPPEL: It's indented right below the name
24 Michael Parker.

25 All right. Is that it? Is that your proffer?

1 MR. SIFERS: Yes.

2 JUDGE SIPPEL: Mr. Cole?

3 MR. COLE: Well, Your Honor, I have the continuing
4 objections that I raised yesterday which I won't, I'll try
5 not to revisit because I think I stated my position. But I
6 do want to renew those.

7 As far as the changes Mr. Sifers has described
8 this morning, I have no problem with changing Morris to
9 Norris. I can certainly live with the asterisk as far as Ms.
10 Kasko's share certificate number is concerned, original
11 share certificate number. Although I continue to be curious
12 as to how it was that Mr. Sifers did speak apparently with
13 someone at the station and got the number 25 at some earlier
14 time and now the source of that information appears to have
15 vanished. I'm not sure how that happened, but at this point
16 I'm not going to make a big deal out of it.

17 My primary concern about the changes that I'm
18 looking at right now are in the titles to each of the pages.
19 This further compounds or accentuates the problem which I
20 identified yesterday. The term "Shareholders of Record
21 Previously Approved by The Commission" as an initial matter
22 it does not provide any timeframe as to previous before
23 what? Or previous after what? What is the relevant date
24 that we are looking at to establish when any particular
25 shareholder had been approved, by which any particular

1 shareholder has been approved by the Commission.

2 That, for openers, is troublesome. And while I
3 can accept the definition as set forth in Footnote 1 as Mr.
4 Sifers has stated it, that then provides me with yet another
5 observation which may be it echoes what I was saying
6 yesterday. But again, to the extent we now have a
7 definition of what is a shareholder of record, I'm sorry, a
8 shareholder previously approved, if Reading Broadcasting
9 Inc. can demonstrate that STV Reading, Inc. which they have
10 included on this list was in fact a shareholder previously
11 approved as of whatever date we determine is the relevant
12 start date for the definition of previously approved, then I
13 can live with this, but as I said yesterday, I do not
14 believe that STV Reading was a previously approved
15 shareholder at any point prior to February of 1992.

16 JUDGE SIPPEL: You stated your reasons for that.
17 We understand.

18 What about the point Mr. Cole raises about a date,
19 a reference date?

20 MR. SIFERS: I could explain that. A couple of
21 explanations.

22 The information, the starting date on this chart
23 for the purposes of the chart is the second column where it
24 says Form 316, 8/14/91 proposed. All I'm trying to assert
25 here is the people who have shares listed, the people who

1 are identified here, were previously approved prior to that
2 date. They may have been approved in one long form
3 application, three long form applications, five long form
4 applications. I'm not trying to indicate how many, and
5 according to the definition it only means that they were
6 previously approved at some point in time. In other words,
7 they were listed on a long form application that was
8 approved by the Commission. So they've been passed upon, if
9 you will, in a prior application.

10 So as of 8/14/91, there was a prior application
11 where they have been passed upon.

12 JUDGE SIPPEL: The same way with respect to all of
13 those dates?

14 MR. SIFERS: Yes.

15 JUDGE SIPPEL: October 15th, November 13, December
16 31, April 16, 1992. All those dates would apply to your
17 explanation as to previously approved.

18 MR. SIFERS: Yes.

19 JUDGE SIPPEL: Mr. Cole?

20 MR. COLE: I'm still not sure I understand -- Your
21 Honor, I'm not trying to be difficult about it. My
22 understanding of what they're trying to show is that as of
23 August 14, 1991, that is what I've perceived to be the
24 earliest date on this chart.

25 JUDGE SIPPEL: First column.

1 MR. COLE: As of August 14, 1991, the individuals
2 listed on page one, in the far left hand column of page one,
3 had at some time or other each of them been previously
4 approved by the Commission.

5 JUDGE SIPPEL: That's correct. By virtue of long
6 form application.

7 MR. COLE: Either by some long form application,
8 which has been submitted and favorably acted upon by the
9 Commission prior to August 14, 1991 -- each of the
10 individuals or entities listed in the far left hand column
11 had been approved by the Commission. That's my
12 understanding of what they're trying to say.

13 JUDGE SIPPEL: That's correct.

14 MR. COLE: Again, I renew my objection because STV
15 Reading does not fit into that category.

16 JUDGE SIPPEL: You've stated your objection and we
17 went through that in some detail yesterday.

18 MR. COLE: But Your Honor, as I understand how Mr.
19 Sifers has described this exhibit this morning, one of the
20 things he's trying, he expressly said, is he is proffering
21 this as a demonstration of who had previously been approved
22 as of, I assume, August 14, 1991. And as a factual matter,
23 this is not evidence of whether or not STV Reading had been
24 approved. This is his interpretation of it.

25 Again, I apologize for renewing this but he again

1 said it this morning. I don't know how else I can get
2 around it.

3 JUDGE SIPPEL: Well, let me ask you this question
4 then. As I understand it, I think I asked this same
5 question before, but there is a long form someplace in the
6 agency's records that shows that Reading Broadcasting prior
7 to August 14, 1991, had submitted a long form application
8 which had the name STV Reading, Inc. on it.

9 MR. COLE: That's incorrect, Your Honor.

10 JUDGE SIPPEL: That's not correct?

11 MR. SIFERS: That's not correct. It would have
12 had Henry N. Aurandt previously approved. The reason those
13 entities underneath him are indented is under the
14 Commission's attribution rule, other rules, once Henry N.
15 Aurandt has been approved, if he establishes an entity
16 called Henry Aurandt Trustee, if he establishes an entity
17 called STV Reading, Inc. where he has more than 50 percent
18 of the voting stock, that's considered under the
19 Commission's attribution rules to fall under that category
20 of passed upon before. The same way if you go on down here
21 with Mr. Perserfe [ph] where he had a profit sharing plan,
22 that new profit sharing plan isn't considered under the
23 Commission's ownership rules and attribution rules to have
24 to be -- These are considered events passed upon previously,
25 by virtue of the fact that he has the controlling shares in

1 that entity. Controlling ownership shares in that entity.

2 That's just simply what the Commission's rules
3 are.

4 MR. COLE: But Your Honor, it is not as simple as
5 that because as Mr. Parker repeatedly testified yesterday,
6 when he issued the shares of stock in Reading Broadcast,
7 Inc. in October of 1991 to STV Reading, Inc. he, Mr. Parker,
8 was under the impression at that point that he held proxies
9 for all the then issued and outstanding stock of STV Reading
10 and was in a position to elect himself president of the
11 organization and then vote that stock as president, which he
12 in fact did according to the records which are in the record
13 of this proceeding, as of the October 30, 1991 meeting and
14 the February 4, 1991 meeting of the shareholders of Reading
15 Broadcasting.

16 MR. SIFERS: I think you're mischaracterizing Mr.
17 Parker's testimony. He did not --

18 JUDGE SIPPEL: Look, I'm sorry. I didn't mean to
19 cut you off, but I'm not going to get into that recall
20 argument today.

21 What I'm going to do is I'm going to leave this on
22 the record as a marked exhibit for identification. And I
23 want to set up a, if it's that important to you I want to
24 set up a briefing schedule for it. I want you to file a
25 Memorandum of Law explaining, you explain why you feel that

1 it should be received as reliable evidence. That's all I'm
2 interested in. Why should I rely on this as you've
3 propounded it. Then I want to get the objections from Mr.
4 Cole.

5 MR. COLE: Thank you, Your Honor.

6 JUDGE SIPPEL: I'll give you ten days to submit
7 it.

8 Do you want to wait until you get the transcripts?

9 MR. SIFERS: I would definitely like to get the
10 transcript, because I will be relying on what Mr. Parker
11 stated on the record yesterday.

12 JUDGE SIPPEL: They should be coming in what,
13 about ten days?

14 MR. SIFERS: I don't know. The Court Reporter is
15 nodding yes, so I assume so.

16 JUDGE SIPPEL: Let's go off the record a minute.

17 (Discussion off the record)

18 JUDGE SIPPEL: On the record.

19 I've set up a briefing schedule on this proposed
20 exhibit and that would be February 7th Mr. Sifers will file
21 a motion, in the form of a motion to admit Reading Exhibit
22 17 for identification. And by February 14th, which is also
23 a Monday, close of business, Mr. Cole will file his reply or
24 opposition to that motion.

25 That takes care of Exhibit 17. So I'm not going

1 to rule, I'm assuming you're moving this into evidence at
2 this time.

3 MR. SIFERS: Yes.

4 JUDGE SIPPEL: I'm reserving my decision on the
5 motion pending the outcome of this briefing schedule. I
6 still want to commend you for the effort. I think it's a
7 good piece of work and if we can get over reliability
8 hurdles, which is very critical, I will receive it.

9 Now we had 17-A. I asked you, can you get --
10 These are in photo-reduced format.

11 MR. SIFERS: I'll take the copies back from the
12 Reporter.

13 JUDGE SIPPEL: Thank you. This will be Reading
14 Exhibit 17-A, and would you just explain again for the
15 record what this document is?

16 MR. SIFERS: This is the stock register for STV
17 Reading, Inc. It's 47 pages. The first page is the cover
18 of the actual register. The second page is a specimen of a
19 sample stock certificate. Then it goes through the stock
20 register for certificates one, two, three, four, and five on
21 pages three through seven. Then beginning with page eight
22 is blank share certificate six along with the register. And
23 that continues through page 45 with blank certificates and
24 registers through certificate 24. Then on page 46 is share
25 certificate number 25, the register for that, which shows

1 that 1,000 shares were issued to Henry N. and Helen Aurandt,
2 the original issue on January 1, 1983.

3 Then the final page, 47 is the back of the book to
4 show that this is a complete register.

5 JUDGE SIPPEL: All right. Thank you.

6 The Reporter, the document will be marked in that
7 fashion to the extent that, that's pretty much how it was
8 identified before.

9 How many pages to this?

10 MR. SIFERS: Forty-seven pages, and it's reduced
11 to 8-1/2 by 11.

12 JUDGE SIPPEL: Thank you very much.

13 That document then, the 47 page document, will be
14 identified for the record as Reading Broadcast Exhibit 17-A
15 and really it's the stock records of STV Reading, Inc.

16 (The document referred to was
17 marked for identification as
18 Reading Exhibit No. 17-A)

19 JUDGE SIPPEL: Is there any objection? Mr. Parker
20 testified as to some of the items in this too, I believe,
21 yesterday.

22 Any objection to receiving that?

23 MR. COLE: Absolutely. It's a completely
24 unreliable document. We have no idea where this came from.
25 We have no idea who prepared it. And let me point out a

1 couple of things, Your Honor.

2 In my limited corporate practice, which I will
3 acknowledge is limited, my experience has been when a
4 corporation initially issues the first share of stocks it's
5 share certificate number one. That happens chronologically
6 the first day, and then when they issue another share they
7 go to share number two. Then when they want to issue the
8 third share they go to share number three and so forth and
9 so on.

10 The document which has been distributed yesterday
11 and then redistributed today shows that share number one
12 was, according to this, issued August 14, 1985. Share
13 number two was issued February 13, 1986. Share number three
14 was issued August 15, 1985, going back several months.
15 Certificate number four supposedly was issued February 13,
16 1986, jumping ahead again. Number five was then February
17 13, 1986. And then you skip a whole bunch of blank
18 certificates until you get to certificate number 25 which
19 was supposedly the very first one issued, two years plus
20 before certificate number one.

21 It strikes me as at least irregular.

22 While Mr. Parker purported to offer some
23 observations about this, his testimony yesterday, as I
24 understood it was, that he wasn't aware of the issuance of,
25 I mean some of the stock here, until significantly after the

1 fact in 1992, I believe it was, because he was under the
2 impression at least as of February 4, 1992, that Dr. Aurandt
3 had not reissued stock to himself.

4 So apparently Mr. Parker didn't know anything
5 about this. And the dates that are recited here pre-date
6 that by six or seven years.

7 So my question is, who prepared this document?
8 Why was it prepared the way it was? And what was exactly
9 going on? I'm not sure --

10 JUDGE SIPPEL: You mean the assembly of the
11 document?

12 MR. COLE: Yeah. Who actually wrote, made these
13 entries on the certificates and purported to issue the
14 shares in 19, again according to the document, 1985, 1986,
15 and 1983.

16 JUDGE SIPPEL: You're basically looking for an
17 audit of the stock records of this company, STV Reading.

18 MR. COLE: You're right. It purports to be the
19 stock records of the company. We have no idea who prepared
20 this, where it came from, how it came to be prepared.

21 JUDGE SIPPEL: Let me see if Mr. Sifers can shed
22 any light on this.

23 MR. SIFERS: Your Honor, it was authenticated
24 yesterday by Mr. Parker who indicated that he had reviewed
25 it in 1982. It was shown to him by -- '92. It was shown to

1 him by Dr. Aurandt's attorney, Mr. Linton, and that became
2 the basis for the settlement agreement that was submitted by
3 Adams in this case.

4 MR. COLE: Your Honor, with all due respect, that
5 doesn't authenticate anything. That just says this is the
6 document that Mr. Parker was shown in 1992, six or seven
7 years after the entries were purported to have been made in
8 here. Mr. Parker didn't know anything about this document.

9 JUDGE SIPPEL: The question is what did Mr. Parker
10 rely upon. That's what his testimony is, is that this is
11 what he relied upon.

12 MR. COLE: With all due respect, Your Honor, Mr.
13 Parker wasn't relying on anything. What Mr. Parker relied
14 on is only for the purpose of deciding that maybe he didn't
15 have control in August of 1992.

16 JUDGE SIPPEL: That's right.

17 MR. COLE: They're offering it for the purposes of
18 establishing that Dr. Aurandt did have control in October of
19 1991.

20 My argument is that in October of 1991 Aurandt did
21 not have control, at least in Parker's view, which is what
22 he testified to yesterday. This document doesn't establish
23 anything.

24 JUDGE SIPPEL: Well, it's being proffered as the
25 stock record of STV Reading, Inc. which is one of the

1 shareholders of Reading Broadcasting, Inc.

2 MR. SIFERS: That's correct.

3 JUDGE SIPPEL: You're questioning the reliability
4 of the stock records.

5 MR. COLE: That's correct.

6 JUDGE SIPPEL: They're not to be relied upon
7 because of the inadequacies that you pointed out.

8 MR. COLE: That's correct.

9 JUDGE SIPPEL: Well, since I'm reserving on
10 Exhibit 17, I'll also reserve on 17-A since there will be an
11 opportunity to review Mr. Parker's transcript. If it
12 weren't for the fact that 17 is on hold I would receive 17-A
13 today for what it's represented to be. However, it really
14 has to be treated as a package, and we do have transcript
15 testimony on this that I will admit I have my own general
16 recollection, but that sometimes is not necessarily totally
17 consistent with what the transcript says.

18 So I'm going to wait on this also. 17-A will also
19 be a portion of that motion in opposition.

20 MR. COLE: Thanks, Your Honor.

21 JUDGE SIPPEL: So I'm reserving on this one also.

22 Did we have something else -- Oh, yes, on the
23 Exhibit --

24 MR. SIFERS: What I prepared, if you would like, I
25 just prepared a new Exhibit 18 and had Exhibit A attached to

1 it so we don't have loose pages floating around.

2 JUDGE SIPPEL: Thank you.

3 MR. SIFERS: The same procedure. Just exchange
4 that with the Reporter's copy. Do we have a defined,
5 definite number of pages here on the proposed exhibit?

6 MR. SIFERS: It is 19 pages.

7 JUDGE SIPPEL: Thank you.

8 This is a 19-page exhibit and it's entitled
9 Debtors Motion for Approval of Management Services
10 Agreement. It goes beyond that, too, but it does contain a
11 copy of Management Services Agreement dated March 21, 1990.

12 The title of this document will speak for itself.
13 It's right on the first page. But as explained by, with the
14 pagination of 19 pages, this document is as given to the
15 Reporter as Reading Exhibit No. 18 for identification. It
16 is marked that way. Reading 18 for identification.

17 (The document referred to was
18 marked for identification as
19 Reading Exhibit No. 18.)

20 JUDGE SIPPEL: We discussed this yesterday also.
21 Did you want to move this into evidence?

22 MR. SIFERS: Yes, we do.

23 JUDGE SIPPEL: Is there anything further you
24 wanted to say about it now, without hearing Mr. Cole first?

25 MR. SIFERS: Mr. Cole's objection yesterday was

1 that it was not a complete document because it didn't have
2 Exhibit A attached to it, and we have now attached Exhibit A
3 to it.

4 JUDGE SIPPEL: Does that remove the objection?

5 MR. COLE: Yes, Your Honor.

6 JUDGE SIPPEL: Then Reading Exhibit 18 is now
7 received in evidence as Reading Exhibit 18.

8 (The document referred to,
9 having been previously marked
10 for identification as Reading
11 Exhibit No. 18 was received in
12 evidence.)

13 JUDGE SIPPEL: Thank you.

14 I know we're holding a witness up here. I
15 apologize.

16 Is there anything else that's outstanding
17 administratively that anybody knows about?

18 MR. COLE: Two small items, Your Honor. One is
19 that I've advised Mr. Hutton that we have instructed our
20 consulting engineers to contact directly RBI's consulting
21 engineer, Mr. Lounden, and we believe that there is a
22 substantial likelihood if not a near certainty that we will
23 work out a stipulation on comparative coverage. So I think
24 on that basis if you could, I assume the record will be kept
25 open at least briefly for the purpose of finalizing that and

1 getting that in, but that appears to be underway and I don't
2 think Cross-Examination of either engineer will be
3 necessary.

4 JUDGE SIPPEL: I'm not going to put a pressing
5 date on that because we do have a phase two, and that's more
6 in the nature of routine, but very important. So I'll wait
7 on that.

8 MR. COLE: The second item is that Mr. Hutton and
9 I have discussed briefly this morning the scheduling of the
10 Adams public witnesses up in Reading, now that we have a
11 sense that this phase will be wrapped up, at least the
12 direct cases will be wrapped up, ideally today. Mr. Hutton
13 and I have at least tentatively agreed, I think, and Mr.
14 Hutton can correct me on this, that we would prefer to take
15 next week off and catch our breath, and then try to schedule
16 in starting as soon as possible the following week,
17 depending on the witness' convenience, and of course Mr.
18 Hutton's availability and mine, but ideally get them done in
19 the first week or two of the last week of January or the
20 first week of February, to try to get those witnesses done
21 up in Reading. We think it will only take about a day. So
22 that process is going through.

23 We'll also consult with Mr. Shook, although my
24 experience is Mr. Shook does not participate in those
25 depositions, but we'll let him know what's going on and

1 certainly invite him to join the party.

2 JUDGE SIPPEL: That's perfectly understandable.

3 MR. HUTTON: Your Honor, that brings up one item
4 in my mind. On the public witnesses who have been deposed
5 previously, we checked the Commission's records and most of
6 those if not all of the deposition transcripts have been
7 submitted to the Secretary's office in accordance with the
8 Commission's rules.

9 I don't know what procedure you normally follow
10 for distributing copies to yourself and to the Bureau.

11 JUDGE SIPPEL: Well, you should get copies to the
12 Bureau. Don't worry about getting copies to me until they
13 come in as exhibits.

14 MR. HUTTON: I'm sorry?

15 JUDGE SIPPEL: I say you should get copies to the
16 Bureau as a matter of course. But don't worry about getting
17 copies to me because they're going to come in as exhibits.
18 Am I missing something here?

19 MR. HUTTON: Do you want us to package them up as
20 exhibits and --

21 JUDGE SIPPEL: That's what we're going to talk
22 about next Wednesday.

23 MR. HUTTON: Okay.

24 JUDGE SIPPEL: We'll probably have an admissions
25 session for phase two and we can do that right then.

1 There's no rush to bring those in.

2 MR. HUTTON: Okay.

3 MR. COLE: And Your Honor, one last question I
4 guess with respect to rebuttal. My understanding, I spoke
5 briefly with Mr. Bechtel, is that we previously advised the
6 Court and the parties that we intend to present at least Mr.
7 Bendetti as a rebuttal witness. He has been on hold for
8 last Wednesday. Then because the other witnesses he was
9 postponed. We would like at least to be able to schedule
10 him in at some point in the not too distant future.

11 JUDGE SIPPEL: What's he going to be a rebuttal
12 witness on? What point?

13 MR. COLE: I believe station programming, station
14 operations as depicted by Reading Broadcasting.

15 JUDGE SIPPEL: And Mr. Bendetti is a former
16 employee?

17 MR. COLE: That's correct.

18 JUDGE SIPPEL: And his deposition's been taken.

19 MR. COLE: Yes, sir.

20 JUDGE SIPPEL: How come we didn't have him this
21 week?

22 MR. COLE: Well he was a rebuttal witness, and we
23 wanted to get all the direct case presentations in first
24 before we swung over into rebuttal. He was scheduled for
25 his convenience, because he's an out of town, he's up in

1 Reading, in the Reading area. His day off is I believe
2 Wednesday, so we had him ready to come down here on
3 Wednesday but there was no slot available because we were
4 doing, I believe, Mr. Parker on Wednesday, and we wanted to,
5 again, get through all the direct case before we started on
6 the rebuttal aspect.

7 JUDGE SIPPEL: Is there going to be opposition to
8 this? Is it something I have to hear argument on or are we
9 just going to schedule this witness?

10 MR. HUTTON: I will object, and if they are given
11 an opportunity for rebuttal then I will want an opportunity
12 for rebuttal. So number one, I object. I don't think a
13 rebuttal phase is necessary. I think we could submit Mr.
14 Bendetti's deposition into the record if you wanted to do
15 that. But if you do decide to schedule a rebuttal phase
16 then we will want to bring at least one rebuttal witness.

17 JUDGE SIPPEL: All right, I'll tell you what I'm
18 going to do. I'm going to set up the same schedule, use
19 those same dates. Since you both have two lawyers on the
20 case, to request rebuttal. That will be -- what was the
21 date that I had, the 7th. And then the 14th. Respective
22 replies to the rebuttal request.

23 MR. COLE: Each party then would come in with
24 whatever -- if a party wishes to present rebuttal, the time
25 to put that on the record and explain what it is in argument

1 would be February 7th.

2 JUDGE SIPPEL: That's correct.

3 MR. COLE: The opposing party then has the
4 opportunity to comment on that by February 14.

5 JUDGE SIPPEL: Correct.

6 MR. COLE: Then if rebuttal were to be permitted
7 we would then set up a schedule.

8 JUDGE SIPPEL: That's correct.

9 MR. COLE: Thank you, Your Honor.

10 JUDGE SIPPEL: That will give you time to look at
11 testimony.

12 I'm going to give you some advance notice on my
13 scheduling. I wouldn't expect to start testimony on phase
14 two before March 6th. That would be the earliest time. I'm
15 not sure, I would think that would give you enough time to
16 prepare.

17 I know you're going to have to go through
18 discovery. I know the Bureau has the traditional Bureau
19 discovery which I think -- I'm not sure about a request, but
20 there certainly is a request for production of documents.
21 There may be some interrogatories. We'll talk all about
22 this next Wednesday. But I'm asking that the parties,
23 particularly Reading, would cooperate to the fullest with
24 the Bureau's request for the information. Then we don't
25 have to spend a lot of time arguing about it.

1 I think in the past you've done that, though. I
2 don't think there's going to be any problem.

3 MR. HUTTON: Yes, sir.

4 JUDGE SIPPEL: All right. That's all I have to
5 say with respect to -- That's as much as I can say today
6 with respect to scheduling.

7 If you want to talk about, amongst yourselves,
8 too, about rebuttal witnesses and we want to talk about that
9 next Wednesday, that's all right with me too. That formal
10 briefing is down as a last ditch effort. If that's the only
11 way we can do it, then that's the way I'll do it. I'm
12 reluctant to go into rebuttal, but you're certainly entitled
13 to ask for it and entitled to make a showing as to why --
14 And I think you're right, Bendetti was around as a name,
15 anyway, that you were intending to use for quite some time.

16 MR. COLE: That's correct, Your Honor.

17 JUDGE SIPPEL: All right.

18 I have one question -- You're being very patient,
19 Mr. Boothe, and I just have one question I want to ask Mr.
20 Cole so I don't forget it before we walk out of here. I
21 should have asked this of Mr. Gilbert yesterday.

22 I went through the home shopping rulemaking by the
23 Commission that Mr. Hutton was good enough to hand up, and
24 that was the one that was adopted July 2, 1993, MM Docket
25 93-8.

1 My question I would have asked of Mr. Gilbert is
2 did Adams or any of the Adams members, members of the Adams
3 group file any comments or pleadings in that proceeding. I
4 looked at the list that they have on the back of the order,
5 which they traditionally do, and I didn't see any name that
6 suggested to me that either any member of the Adams group
7 did or any individual did.

8 However, sometimes people come in under different
9 names or different groups. So I want to ask the question
10 right straight up. Do you know?

11 MR. COLE: My recollection is, and Mr. Hutton can
12 correct me on this, I believe he asked the question
13 yesterday and the answer was no.

14 MR. HUTTON: That's correct, sir.

15 MR. COLE: That neither Adams nor any Adams
16 principal had participated in that ruling.

17 JUDGE SIPPEL: That's why we make transcripts.
18 Thank you, gentlemen. That's all I have.

19 MR. COLE: If you want I can reconfirm that, but
20 my recollection is --

21 JUDGE SIPPEL: No. If it's been asked and
22 answered, no. If it's been asked and answered then that's
23 it.

24 But you recall that the answer was no. I mean
25 that seems to be the collective recollection that the answer

1 was no.

2 MR. COLE: That's right.

3 JUDGE SIPPEL: That's it.

4 Mr. Boothe? Do you want to come forward and I'll
5 administer the oath. Thank you for your patience.

6 Whereupon,

7 JOSEPH BOOTHE

8 having been first duly sworn, was called as a witness herein
9 and was examined and testified as follows:

10 JUDGE SIPPEL: Please be seated.

11 MR. COLE: Your Honor, before we introduce the
12 witness onto the record which I certainly intend to do, in
13 preparing for today's testimony he noted a couple of
14 corrections and some we can just do I believe with
15 interlineations in our notebooks, but I have prepared
16 substitute pages for one and all so we'll have nice clean
17 copies.

18 How would you like me to proceed on those? To
19 identify those in the record, or can we just pull out the
20 old copies, put in new copies and move from there?

21 JUDGE SIPPEL: I'd prefer to use the latter
22 procedure. It's just going to make it --

23 MR. COLE: If I might, Your Honor, let me start
24 with, if everybody can get their green notebooks out and
25 their green notebooks are Adams Communications Corporation

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1 Exhibit No. 2.

2 JUDGE SIPPEL: I knew there was going to be a
3 purpose to this color coding, and here it is.

4 MR. COLE: There you go.

5 We're going to go to pages three and four of that,
6 both of which contain two tables each. I would like to, I'm
7 distributing now to Your Honor, the Reporter and counsel
8 well as the witness --

9 JUDGE SIPPEL: These are new pages three and four.

10 MR. COLE: These are new pages. These substitute
11 in for the previously exchanged three and four.

12 JUDGE SIPPEL: And you will assist the Reporter in
13 making sure those changes are made.

14 MR. COLE: Right.

15 JUDGE SIPPEL: Okay. Permission granted.

16 MR. COLE: Thank you, Your Honor.

17 Next, in the black notebook which is entitled
18 Adams Communications Corporation Exhibit 3, I have two
19 items. One is a one-page insert which is substituted for
20 the page immediately behind the first tab. The first tab
21 reads 1989-1990 weekly summary, and there is then a one-page
22 document entitled summary analysis for 1989-1990 composite
23 week. And we have a correction on that, therefore, this is
24 the page I'm now distributing to the Court, the Reporter,
25 the witness, and counsel. It should be substituted in for

1 that one page.

2 It reflects, as all will note, an adjustment to
3 include some additional programming which Mr. Boothe --

4 JUDGE SIPPEL: Hold on just a second.

5 What was in the black notebook was marked page one
6 and it had Adams Exhibit 2, 1989-1990 -- Down in the lower
7 right hand corner of the black notebook.

8 MR. COLE: Yes, Your Honor. That's correct. That
9 has been, I'm sorry. This is the exhibit -- That's the
10 pagination as the exhibit was exchanged. After the exhibit
11 was exchanged Your Honor suggested a different numbering
12 system for the exhibits, and so that should technically read
13 Adams Exhibit 3.

14 JUDGE SIPPEL: All right.

15 And where it says page 1A, meaning this is the
16 page --

17 MR. COLE: I want to identify that as the
18 replacement page so there will be no confusion about that.

19 JUDGE SIPPEL: All right.

20 MR. COLE: Next is a two-page insert at the next
21 tab. The next tab in the black notebook reads daily
22 analysis, 10/1/89, and consists in the form as originally
23 exchanged and received into evidence, a one-page document
24 titled daily analysis for October 1, '89, and I am now going
25 to distribute a two-page substitute for that, and I'll

1 explain why it's a two-page substitute momentarily.

2 These two pages would be inserted immediately
3 after that tab I just described. And the page which is in
4 there now would be removed.

5 What happened was in reviewing the logs and the
6 underlying materials in preparation for today's testimony,
7 Mr. Boothe can describe it in greater detail if anyone cares
8 to question him about it, Mr. Boothe determined that certain
9 programs or programming material which had been omitted from
10 the exhibit as originally exchanged should have been
11 included. And this included a number of items in the period
12 I believe August 1989 to January 1990.

13 Accordingly, we have adjusted the exhibits to
14 include reference to that programming and in so doing that
15 affected some of the composite week analyses for the
16 individual composite weeks 1989-1990. Therefore, we are
17 amending or revising Exhibit 2, which is the overall
18 composite week analysis summary, and certain limited pages
19 in Exhibit 3 which is the specific analysis relating to the
20 1989-1990 composite week.

21 Finally, Your Honor --

22 JUDGE SIPPEL: Any objection?

23 MR. HUTTON: No.

24 MR. COLE: Finally, Your Honor, going back to the
25 green volume, I apologize for not having done this the first

1 time around, I have a supplement which consists of the
2 listing of the programs during the period August 1989 to
3 January 1990 which Mr. Boothe found, or the programming
4 materials Mr. Boothe found which are now being included and
5 which we're giving RBI credit for. What I'm distributing
6 now is a document, ten pages in length, with an unnumbered
7 11th cover page entitled Supplemental Attachment to Adams
8 Communications Corporation Exhibit 2, Appendix A,
9 Supplemental Listing of Non-Home Shopping Network Programs
10 broadcast on Station WTVE during the 1989-1994 License Term.

11 What I would propose is that this supplement
12 simply be inserted into the black notebook immediately
13 before the tab reading Appendix B, and that it be put in at
14 the end of Appendix A as is presently seen.

15 JUDGE SIPPEL: So before the tab Appendix B.

16 MR. COLE: Before the Appendix B tab. This is a
17 supplemental inclusion for Appendix A.

18 JUDGE SIPPEL: Permission granted.

19 Any objection?

20 MR. HUTTON: No, sir.

21 MR. COLE: Thank you, Your Honor.

22 JUDGE SIPPEL: I want to give this instruction.
23 Assist the Reporter in these changes in the filed exhibits,
24 I want the old exhibits taken out, the new ones going in. I
25 can save the old ones in case anybody sees some kind of an

1 unforeseen problem with this, but I don't want that official
2 record to have anything but one exhibit.

3 MR. COLE: Thank you, Your Honor.

4 JUDGE SIPPEL: Very well.

5 MR. COLE: If I may proceed with the examination?

6 JUDGE SIPPEL: Yes, sir.

7 DIRECT EXAMINATION

8 BY MR. COLE:

9 Q Mr. Boothe, could you please state your name and
10 address for the record?

11 A My name is Joseph Boothe. My address is 2500
12 North 20th Road, Apartment 202, Arlington, Virginia 22201.

13 Q Mr. Boothe do you have before you a total of six
14 color-coded notebooks entitled Adams Communications
15 Corporation Exhibit Nos. 2 through 7?

16 A Yes, I do.

17 Q Have you had an opportunity to look through those?

18 A Yes, I have.

19 Q Please take the green notebook which is Exhibit
20 No. 2 and turn to the very last page of that, please. Is
21 that your signature?

22 A Yes, it is.

23 Q Now Mr. Boothe, in addition to the substitute
24 pages which I have just made and the supplemental pages I've
25 added in to these exhibits, are there any other changes that

1 you're aware of that should be made in any of these
2 notebooks?

3 A Yes, there are.

4 Q Could you tell us what they are?

5 A In Appendix A to Exhibit 2 on page 22, there is a
6 listing for Jimmy Swaggert Weekly Telecast dated 1/12/91.
7 That is a typo. That should read 1/12/92.

8 JUDGE SIPPEL: I'm sorry, would you give me that
9 page again? I was doing something else.

10 THE WITNESS: Certainly. Page 22, in the green
11 notebook.

12 JUDGE SIPPEL: Thank you. Direct me to it,
13 please?

14 THE WITNESS: Page 22, the third entry, Jimmy
15 Swaggert Weekly Telecast dated 1/12/91, should read 1/12/92.

16 JUDGE SIPPEL: Thank you.

17 BY MR. COLE:

18 Q Any others?

19 A Yes. Moving to page 55 there is another typo, the
20 very first entry dated 4/29/93 Today With Marilyn on page
21 55, should read 4/29/92.

22 JUDGE SIPPEL: Is that Today With Marilyn?

23 THE WITNESS: Yes.

24 JUDGE SIPPEL: Got it.

25 THE WITNESS: On the next page, page 56, the third

1 entry from the bottom dated 7/4/93, Firework Safety, that
2 entry should be eliminated.

3 JUDGE SIPPEL: On the same page?

4 THE WITNESS: On page 56, the next page.

5 JUDGE SIPPEL: Where was it?

6 THE WITNESS: Third from the bottom dated 7/4/93.

7 JUDGE SIPPEL: Just delete that.

8 THE WITNESS: That should be deleted.

9 JUDGE SIPPEL: Very well.

10 THE WITNESS: On page 62, the entry dated
11 12/26/93, fifth from the bottom, that is the top of the two
12 entries marked "illegible". The first one there should have
13 the word "illegible" replaced with the title Grill Express.

14 JUDGE SIPPEL: Two words?

15 THE WITNESS: Yes.

16 JUDGE SIPPEL: G-R-I-L-L?

17 THE WITNESS: Yes.

18 JUDGE SIPPEL: Express.

19 THE WITNESS: On page 64, there are several
20 "illegibles" that have been made out on this page. Starting
21 with 2/6/94, the very first entry, should read Children's
22 Room.

23 JUDGE SIPPEL: Instead of illegible? Strike
24 illegible, insert Children's Room.

25 THE WITNESS: Yes, sir.

1 The second entry directly below that, also marked
2 illegible, should be replaced with Twinkle.

3 JUDGE SIPPEL: T-W-I-N-K-L-E.

4 THE WITNESS: Yes, sir.

5 And moving down three more entries, the third
6 marked illegible, illegible should be replaced with Widget,
7 W-I-D-G-E-T.

8 JUDGE SIPPEL: Got it.

9 THE WITNESS: The next to the last entry on 2/6/94
10 marked illegible, this one directly above Dr. Scott's Sunday
11 Services.

12 JUDGE SIPPEL: I see it.

13 THE WITNESS: Illegible should be replaced with
14 Making Money.

15 JUDGE SIPPEL: We all can spell that.

16 (Laughter)

17 THE WITNESS: Moving down to 2/27/94, the third
18 from the last entry, the lower of the two marked illegible.

19 JUDGE SIPPEL: Above Dr. Scott's Sunday Services?

20 THE WITNESS: Yes.

21 JUDGE SIPPEL: I see that.

22 THE WITNESS: Illegible should be replaced with
23 Braun Spirit, B-R-A-U-N, second word, Spirit.

24 JUDGE SIPPEL: Okay.

25 THE WITNESS: Then moving to page 69, in the lower

1 half of the page dated 7/9/94 the second and third entries
2 there, Somewhere's our Dog, and the National Ulcer Quiz,
3 should both be eliminated.

4 JUDGE SIPPEL: Completely?

5 THE WITNESS: Yes, sir.

6 JUDGE SIPPEL: Nothing in its place?

7 THE WITNESS: No, sir.

8 That is all.

9 BY MR. COLE:

10 Q With those changes, Mr. Boothe, is it accurate to
11 state that the materials contained in the six notebooks that
12 you have before you comprise your testimony in the
13 proceeding?

14 A Yes, they do.

15 MR. COLE: Your Honor, the witness is available
16 for Cross-Examination.

17 JUDGE SIPPEL: Thank you, Mr. Cole.

18 Mr. Hutton, your witness.

19 MR. HUTTON: Thank you.

20 CROSS-EXAMINATION

21 BY MR. HUTTON:

22 Q Mr. Boothe, will you state your educational
23 background for us?

24 A Beginning with high school, college or where?

25 Q Beginning with college.

1 A I graduated from Louisiana State University in
2 December of 1991 with a Bachelor's Degree in Political
3 science with a minor in History. I graduated from Louisiana
4 State University Law School in May of 1995. And I am
5 currently pursuing a Master of Arts Degree in Environmental
6 Law from the George Washington University Law School.

7 Q Have you ever prepared a report similar to this
8 one before?

9 A Not quite like this.

10 Q Have you ever worked for a broadcast station?

11 A No, sir.

12 Q Do you have any background in broadcast analysis?

13 A No, sir.

14 Q Is it fair to say that the purpose of the analysis
15 that you have submitted is to provide a showing as to the
16 public affairs programming aired by WTVE during the 1989-
17 1994 license term?

18 A Not exactly. The exhibit that I have prepared and
19 the analysis that I applied to it is one of how the station
20 has characterized its programming during the license term.

21 Q In preparing the analysis, what records did you
22 review?

23 A I reviewed primarily the daily programming logs of
24 the station, and I also reviewed and consulted the quarterly
25 reports issued and program reports during the license term,

1 as well as some of the depositions and materials provided
2 during discovery from Reading Broadcasting.

3 Q Which depositions?

4 A Mr. Bendetti's, Ms. Bradley's, and I think that
5 was all.

6 Q In Appendix B at page two at the bottom of the
7 page you make a reference to "Today With Marilyn appearing
8 to have been a religious program which under historical
9 Commission practice might have been characterized as other
10 non-entertainment programming."

11 What's the basis for your understanding as to
12 historical Commission practice?

13 A As far as the interpretation of historical
14 Commission practice applies?

15 Q Not necessarily just with respect to Today With
16 Marilyn, but what's the basis for you understanding
17 generally of historical Commission practice about
18 classifying programming?

19 A Primarily that would come from Mr. Cole and Mr.
20 Bechtel.

21 Q So you didn't review any Commission cases in
22 deciding what was historical Commission practice?

23 A I did review a couple of them.

24 Q Do you recall which ones?

25 A One of the ones I reviewed was, I believe, Bechtel

1 vs. FCC, and there was an underlying ruling in that case
2 which I also looked at.

3 Q That was not a comparative renewal case, was it?

4 A I believe that it was.

5 I believe I looked at a comparative renewal case
6 and that's the one that I'm trying to -- I may have applied
7 the wrong name to it, but there was a comparative renewal
8 case that I looked at.

9 I think it was the underlying case hearing that
10 led to Bechtel vs. FCC but I'm not certain about that.

11 Q I'd like to refer to Appendix A and I want to
12 understand on the first page of Appendix A what your
13 definition of program is and how that was determined.

14 A The definition of programs applied to this
15 analysis was as broad-based as we could reasonably make it,
16 thus it included anything that we could not readily identify
17 -- anything that was not identified or readily identifiable
18 from the log as some other form of programming such as a
19 commercial or a promotional announcement or PSA or [per
20 inquiry], things like that.

21 Q By PSA what do you mean?

22 A Public service announcement.

23 Q What type of programming is a public service
24 announcement in your understanding?

25 A In my understanding a public service announcement